

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

FAIRPLAY ELECTRIC CARS, LLC )  
                                  )  
                                 Plaintiff, )  
                                  )  
v                               )                                 C.A. No. \_\_\_\_\_  
                                  )  
                                  )  
                                  )  
                                 Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT**

Plaintiff, FairPlay Electric Cars, LLC (“FairPlay”), by and through its attorneys, Potter Anderson & Corroon LLP and Dykema Gossett PLLC, states as follows for its Complaint against Defendants, Textron Innovations, Inc. and E-Z-GO (A Division of Textron Inc.).

**JURISDICTION AND VENUE**

1. This is an Action for declaratory judgment, arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 and the Patent Laws of the United States of America, 35 U.S.C. §§ 101 *et seq.*, seeking a declaratory judgment of non-infringement, of United States Design Patent Nos. 345,717 (“the ‘717 Patent”), 369,762 (“the ‘762 Patent”) and 373,099 (“the ‘099 Patent”), each of which are entitled “Golf Car.”

2. This Court has Subject Matter Jurisdiction over all causes of action set forth hereunder pursuant to 28 U.S.C. §§ 1331 (Federal Question Jurisdiction), 1338(a) (Jurisdiction over Patents), 2201 and 2202 (both Sections relating to Jurisdiction under the Declaratory Judgment Act).

3. This Court also has Personal Jurisdiction over Defendants because Defendants, Textron Innovations Inc. and Textron Inc., are incorporated in and conduct business within the State of Delaware and this District.

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) in that, at all times material to this Complaint, Defendants have committed one or more of the acts complained of herein within the United States, this State and this District.

### **PARTIES**

5. FairPlay is a Limited Liability Corporation organized and existing under the laws of the State of Colorado. FairPlay maintains a principal place of business at 743 Horizon Court, Suite 333, Grand Junction, Colorado, 81506. FairPlay is in the business of, *inter alia*, marketing and selling electric cars, including golf cars.

6. Defendant Textron Innovations Inc. is a Corporation organized and existing under the laws of the State of Delaware, and maintains a principal place of business at 40 Westminster Street, Providence, Rhode Island, 02903.

7. Defendant Textron Inc. is a Corporation organized and existing under the laws of the State of Delaware, and maintains a principal place of business at 40 Westminster Street, Providence, Rhode Island, 02903.

8. E-Z-GO is a Division of Textron Inc., with a principal place of business at 1451 Marvin Griffin Road, Augusta, Georgia, 30906. E-Z-GO is in the business of, *inter alia*, marketing and selling golf cars.

**FACTUAL BACKGROUND**

9. An actual justiciable case or controversy exists between the parties with respect to FairPlay's 2007 ZX Series Cars (the "2007 ZX Cars"), and the infringement of three patents assigned to Defendant Textron Inc.

10. On April 5, 1994, the '717 Patent, entitled "Golf Car," issued to William R. Molzon and James M. Criscuolo. A true and accurate copy of the '717 Patent is attached to this Complaint as Exhibit A.

11. On May 14, 1996, the '762 Patent, entitled "Golf Car," issued to William R. Molzon and James M. Criscuolo. A true and accurate copy of the '762 Patent is attached to this Complaint as Exhibit B.

12. On August 27, 1996, the '099 Patent, entitled "Golf Car," issued to William R. Molzon and James M. Criscuolo. A true and accurate copy of the '099 Patent is attached to this Complaint as Exhibit C.

13. Each of the '717, '762 and '099 Patents lists as the Assignee Defendant Textron Inc.

14. On January 17, 2006, Defendants filed a Complaint For Injunctive Relief And Jury Demand ("Complaint") against FairPlay in the United States District Court for the Southern District of Georgia. This Action, referred to hereinafter as the "Georgia Action," was assigned case no. CV106-009. The Georgia Action alleged, *inter alia*, the infringement of the '717, '762 and '099 Patents by FairPlay of all of the golf cars then being marketed and sold by FairPlay, namely FairPlay's Fleet Model Golf Car Nos. PEC-2F4840 and PEC-4F4840 and FairPlay's Legacy Model Cars.

15. Along with the Complaint, Defendants requested, and were granted a Preliminary Injunction hearing in which FairPlay was ordered to show cause by January 23, 2006, as to why a Preliminary Injunction was not to be ordered against FairPlay concerning infringement of the '762 patent by FairPlay's Fleet Model Golf Cars.

16. On January 23, 2006, a Preliminary Injunction Order was issued against FairPlay, and FairPlay was "enjoined and restrained within the United States of America from making, assembling, importing, marketing, selling, or leasing the two seater versions of [FairPlay's] Fleet and Legacy Model Golf Cars, or any equivalent golf car." A true and correct copy of the Preliminary Injunction Order is attached to this Complaint as Exhibit D.

17. FairPlay is not showing or marketing its Fleet Model Golf Cars (Nos. PEC-2F4840 and PEC-4F4840), or any equivalent golf cars, at a PGA Merchandise Show in Orlando, Florida on January 26-29, 2006 ("the Orlando Trade Show"), nor at the Golf Industry Show in Atlanta, Georgia on February 9-11, 2006 ("the Atlanta Trade Show").

18. FairPlay is introducing for the first time its 2007 ZX Cars, at both the Orlando and Atlanta Trade Shows.

19. As a result of Defendants' actions and Defendants' overbroad assertions of patent rights, FairPlay has an immediate, objective and reasonable apprehension that Defendants will and intend to allege the infringement of the '717, '762 and/or '099 Patents through the importation, use, offer for sale and/or sale of the 2007 ZX Cars.

**COUNT ONE – DECLARATION OF PATENT NONINFRINGEMENT**

20. FairPlay incorporates and realleges the averments contained in Paragraphs 1 through 19, above.

21. This Count One is for a declaration that the 2007 ZX Cars imported, used, offered for sale and/or sold by FairPlay do not infringe any valid claim of the '717, '762 or '099 Patents.

22. By virtue of Defendants' actions and FairPlay's reasonable apprehension that it will face an infringement suit, there is a substantial and continuing justiciable controversy between FairPlay and Defendants as to Defendants' right to threaten or maintain suit for infringement of the '717, '762 and/or '099 Patents by FairPlay's importation, use, sale and/or offer for sale of its 2007 ZX Cars.

23. Further, FairPlay has a reasonable belief of suit imminently being brought against it by Defendants' for infringement of the '717, '762 and/or '099 Patents by FairPlay's manufacture, use, sale and/or offer for sale of its 2007 ZX Cars.

24. FairPlay does not infringe the Claims of the '717, '762 and '099 Patents by its 2007 ZX Cars, and FairPlay's conduct does not violate 35 U.S.C. § 271.

25. Accordingly, FairPlay is entitled to a declaratory judgment of non-infringement of the '717, '762 and '099 Patents by its 2007 ZX Cars.

**PRAYER FOR RELIEF**

WHEREFORE, FairPlay respectfully requests the following relief:

A. Judgment that Defendants are without right or authority to threaten or maintain suit against FairPlay or its customers for the alleged infringement of the '717, '762 and '099 Patents by the 2007 ZX Cars; and that the '717, '762 and '099 patents are not infringed by FairPlay because of the importation, use, offering for sale and/or sale of the 2007 ZX Cars;

B. A preliminary and permanent injunction enjoining Defendants, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with Defendants who receive actual notice thereof, from initiating infringement litigation or threatening FairPlay, or any of its customers, dealers, agents, servants or employees, or any prospective or present sellers, dealers or users of FairPlay's 2007 ZX Cars, with infringement litigation, or charging any of them, either verbally or in writing, with infringement of the '717, '762 and/or '099 Patents, because of the importation, use, sale or offering of sale of FairPlay's 2007 ZX Cars;

C. Award FairPlay its costs and reasonable attorney's fees; and

D. Grant FairPlay such further relief as this Court deems just and proper.

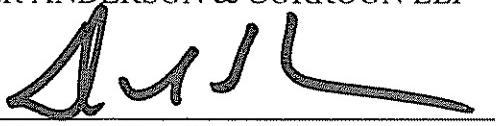
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POTTER ANDERSON & CORROON LLP

By: \_\_\_\_\_



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*Attorneys for Plaintiff*

Dated: January 30, 2006

# Exhibit A



US00D345717S

**United States Patent [19]**

Molzon et al.

[11] Patent Number: Des. 345,717

[45] Date of Patent: \*\* Apr. 5, 1994

[54] GOLF CAR

4,650,238	3/1987	Healey	296/37.7
4,772,064	9/1988	Moore	296/102
4,773,695	9/1988	Jones et al.	296/77.1
5,094,500	3/1992	Maypole et al.	296/102

[75] Inventors: William R. Molzon, Clarkson, Mich.; James M. Criscuolo, Martinez, Ga.

[73] Assignee: Textron Inc., Providence, R.I.

## OTHER PUBLICATIONS

[\*\*] Term: 14 Years

1990 E-Z-Go Textron Product Catalog, pp. 1, 6, 9, 14, 22, 23, 24.

[21] Appl. No.: 886,444

Primary Examiner—Wallace R. Burke  
Assistant Examiner—M. Brown  
Attorney, Agent, or Firm—Perman & Green

[22] Filed: May 20, 1992

## [57] CLAIM

[52] U.S. Cl. D12/16  
[58] Field of Search 296/186, 280/DIG. 5; D12/16

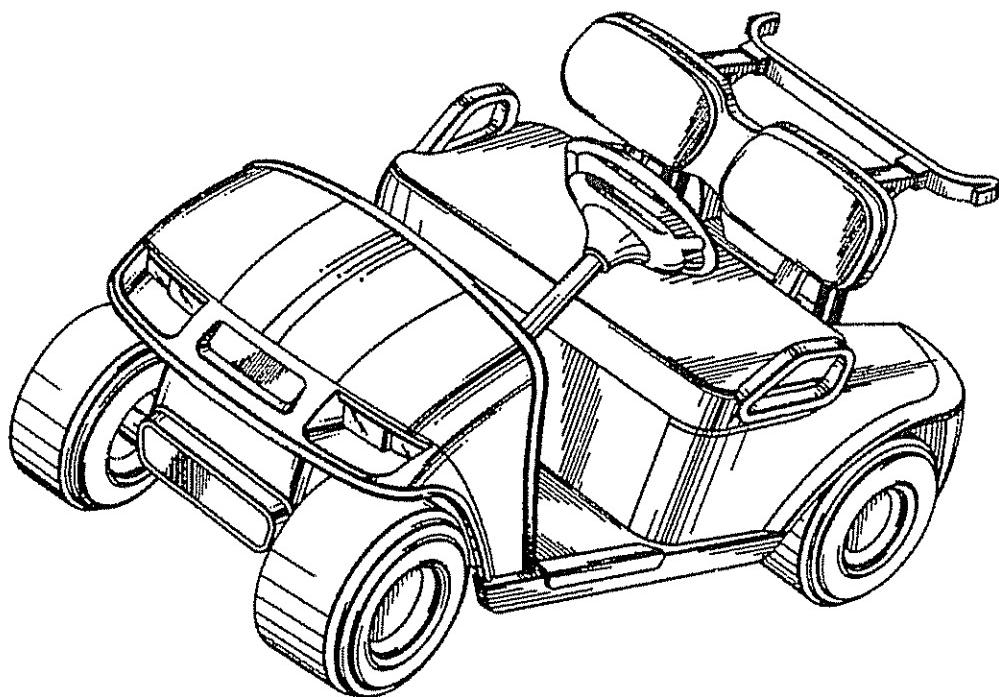
The ornamental design for a golf car, as shown and described.

## [56] References Cited

## DESCRIPTION

## U.S. PATENT DOCUMENTS

FIG. 1 is a perspective view of a golf car showing our new design;  
 FIG. 2 is a top plan view thereof;  
 FIG. 3 is a side elevational view thereof, the opposite side being a mirror image;  
 FIG. 4 is a front elevational view thereof; and,  
 FIG. 5 is a rear elevational view thereof.

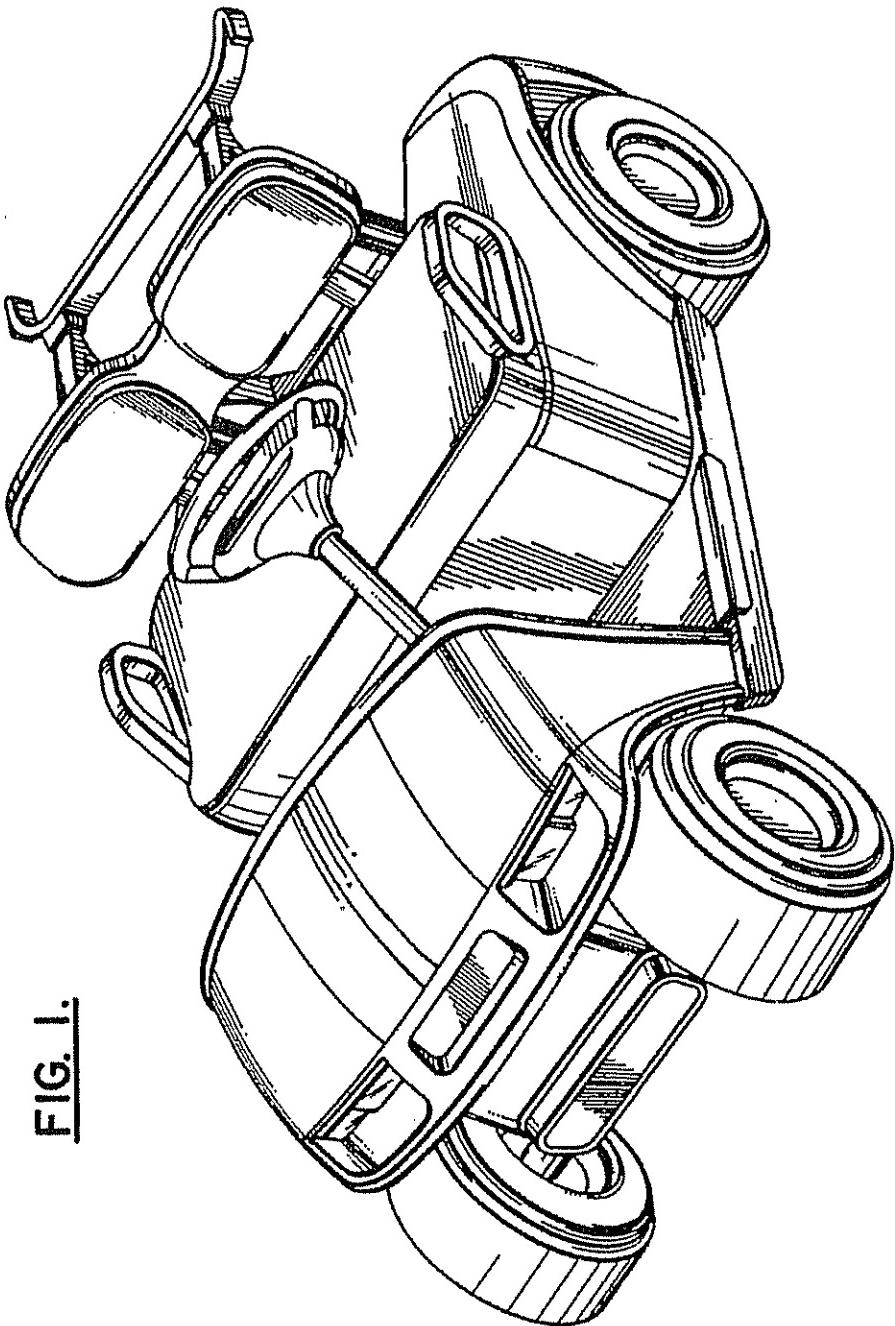


U.S. Patent

Apr. 5, 1994

Sheet 1 of 4

Des. 345,717



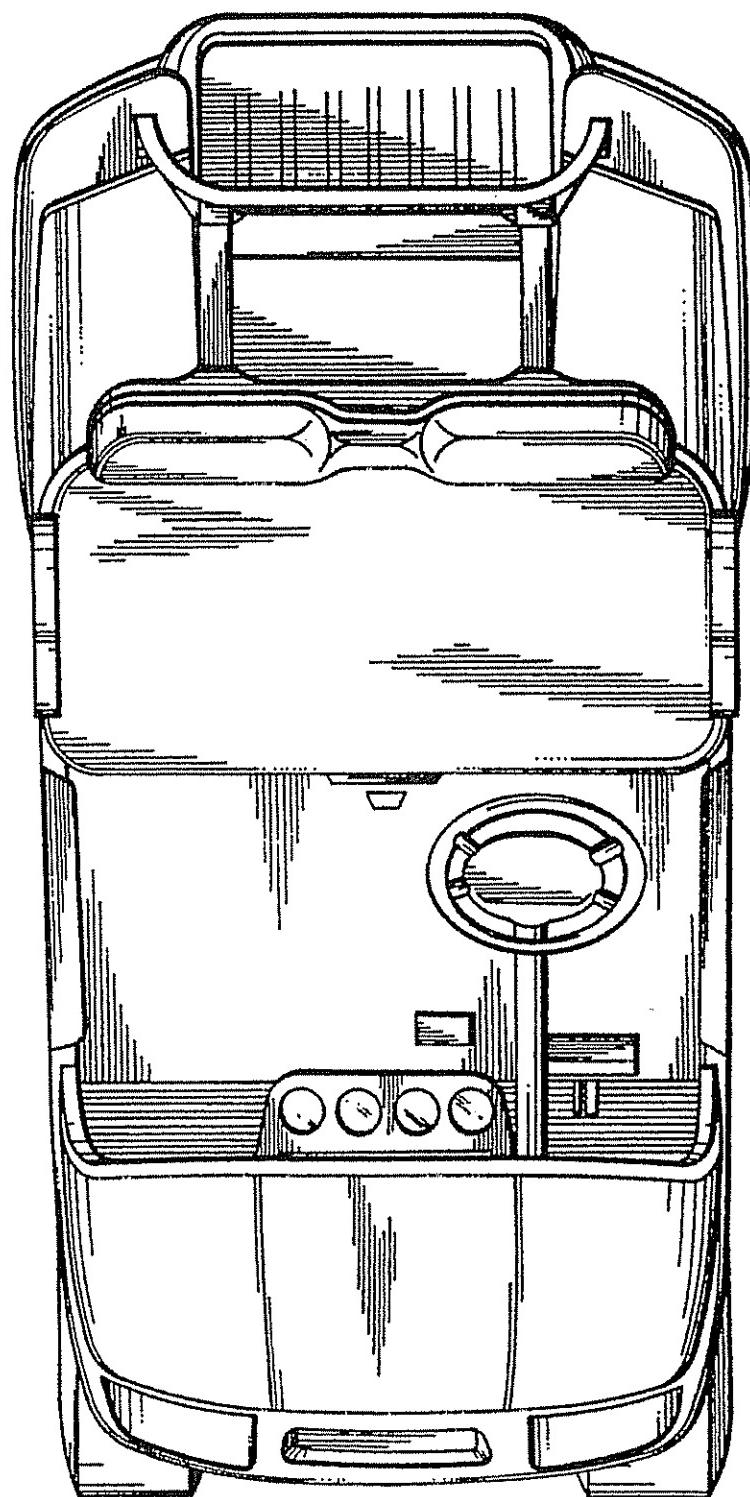
U.S. Patent

Apr. 5, 1994

Sheet 2 of 4

Des. 345,717

FIG. 2.



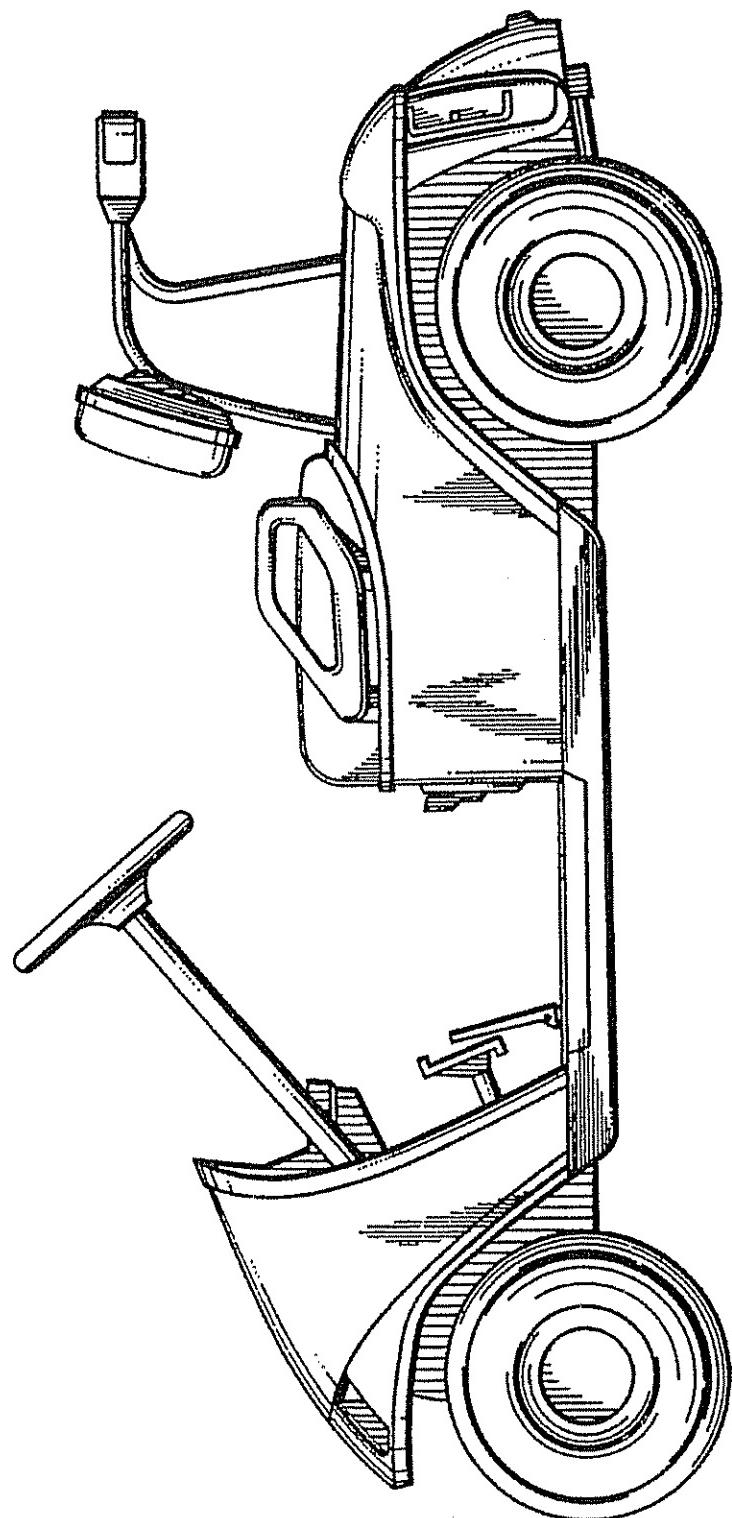
**U.S. Patent**

Apr. 5, 1994

Sheet 3 of 4

**Des. 345,717**

FIG. 3.



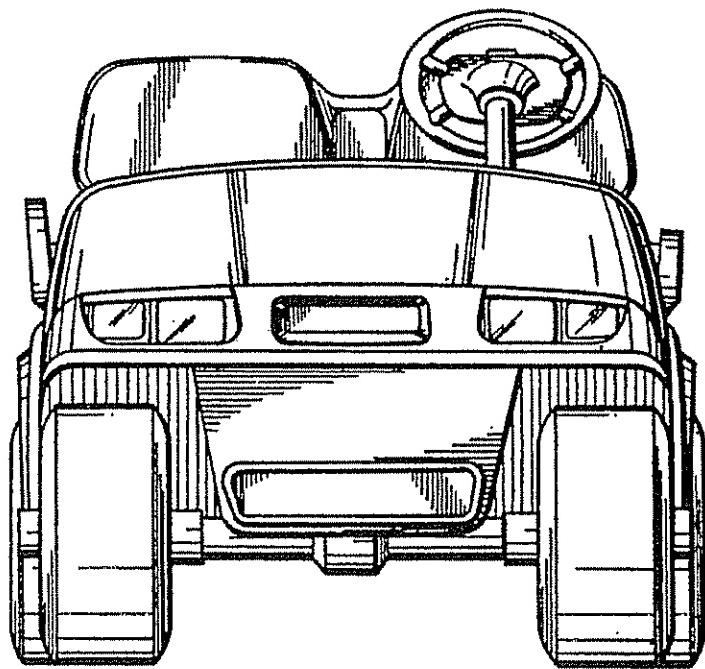
**U.S. Patent**

Apr. 5, 1994

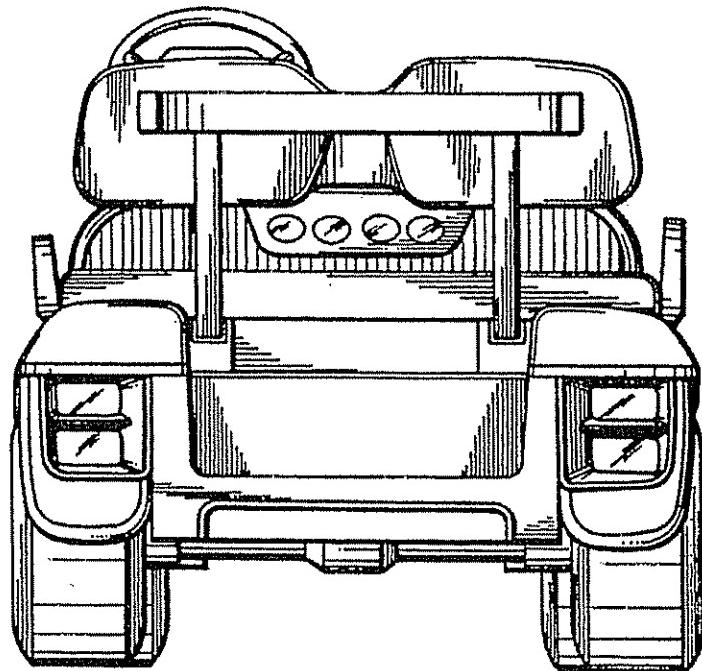
Sheet 4 of 4

**Des. 345,717**

**FIG. 4.**



**FIG. 5.**



# **Exhibit B**



US00D369762S

**United States Patent** [19]  
Molzon et al.

[11] Patent Number: Des. 369,762  
[45] Date of Patent: \*\*May 14, 1996

## [54] GOLF CAR

[75] Inventors: William R. Molzon, Clarkston, Mich.; James M. Criscuolo, Martinez, Ga.

[73] Assignee: Textron Inc., Providence, R.I.

[\*\*] Term: 14 Years

[21] Appl. No.: 29,859

[22] Filed: Oct. 18, 1994

## Related U.S. Application Data

[63] Continuation-in-part of Ser. No. 17,534, Jan. 14, 1994, which is a continuation-in-part of Ser. No. 886,444, May 20, 1992, Pat. No. Des. 345,717, and Ser. No. 886,445, May 20, 1992, Pat. No. Des. 345,718

[52] U.S. Cl. D12/16

[58] Field of Search D12/16; 280/DIG. 5; 296/186

## [56] References Cited

## U.S. PATENT DOCUMENTS

D. 255,558	6/1980	Ekuan	D12/16
D. 320,580	10/1991	Kim	D12/16
D. 326,831	6/1992	Lanius et al.	D12/16
D. 345,717	4/1994	Molzon et al	D12/16
D. 345,718	4/1994	Molzon et al.	D12/16

4,037,614	7/1977	Hines et al	135/5 A
4,098,536	7/1978	Mills	296/78 1
4,334,692	6/1982	Lynch	280/79.1 A
4,533,013	8/1985	Hightower	180/210
4,650,238	3/1987	Healey	296/37.7
4,772,064	9/1988	Moore	296/102
4,773,695	9/1988	Jones et al.	296/77.1
5,094,500	3/1992	Maypole et al.	296/102

## OTHER PUBLICATIONS

1990 E-Z-GO Textron Product Catalog, pp. 1, 6, 9, 14, 22, 23, 24.

Primary Examiner—Melody N. Brown  
Attorney, Agent, or Firm—Pernam & Green

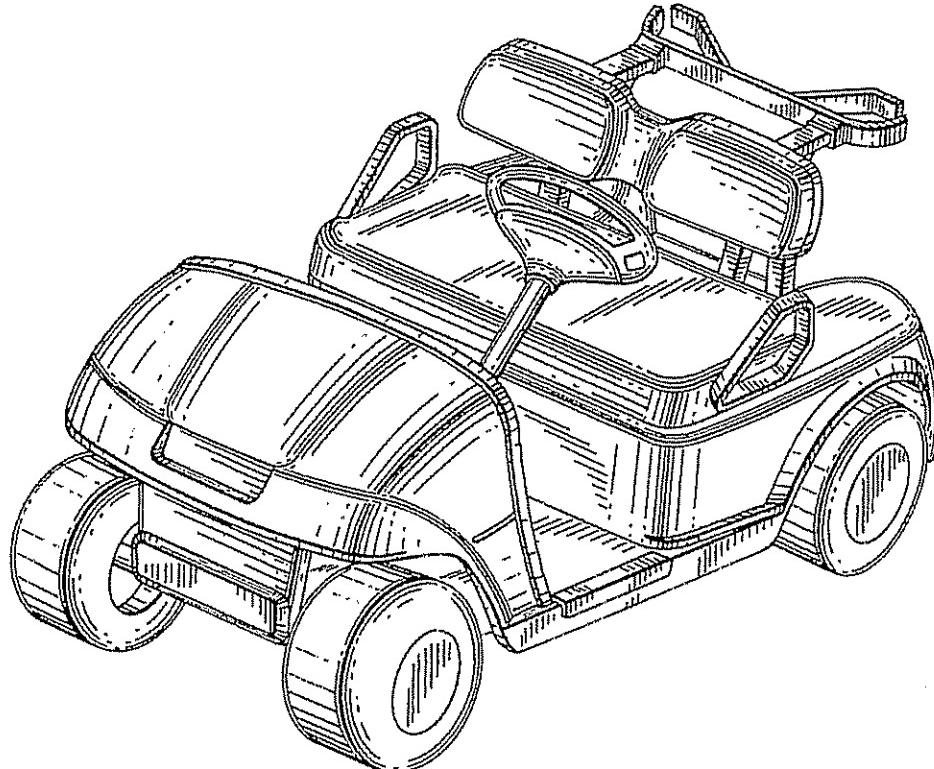
## [57] CLAIM

The ornamental design for a golf car, as shown and described.

## DESCRIPTION

FIG. 1 is a perspective view of a golf car showing our new design;  
FIG. 2 is a top plan view thereof;  
FIG. 3 is a side elevational view thereof, the opposite side being a mirror image;  
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FIG. 5 is a rear elevational view thereof.

1 Claim, 4 Drawing Sheets

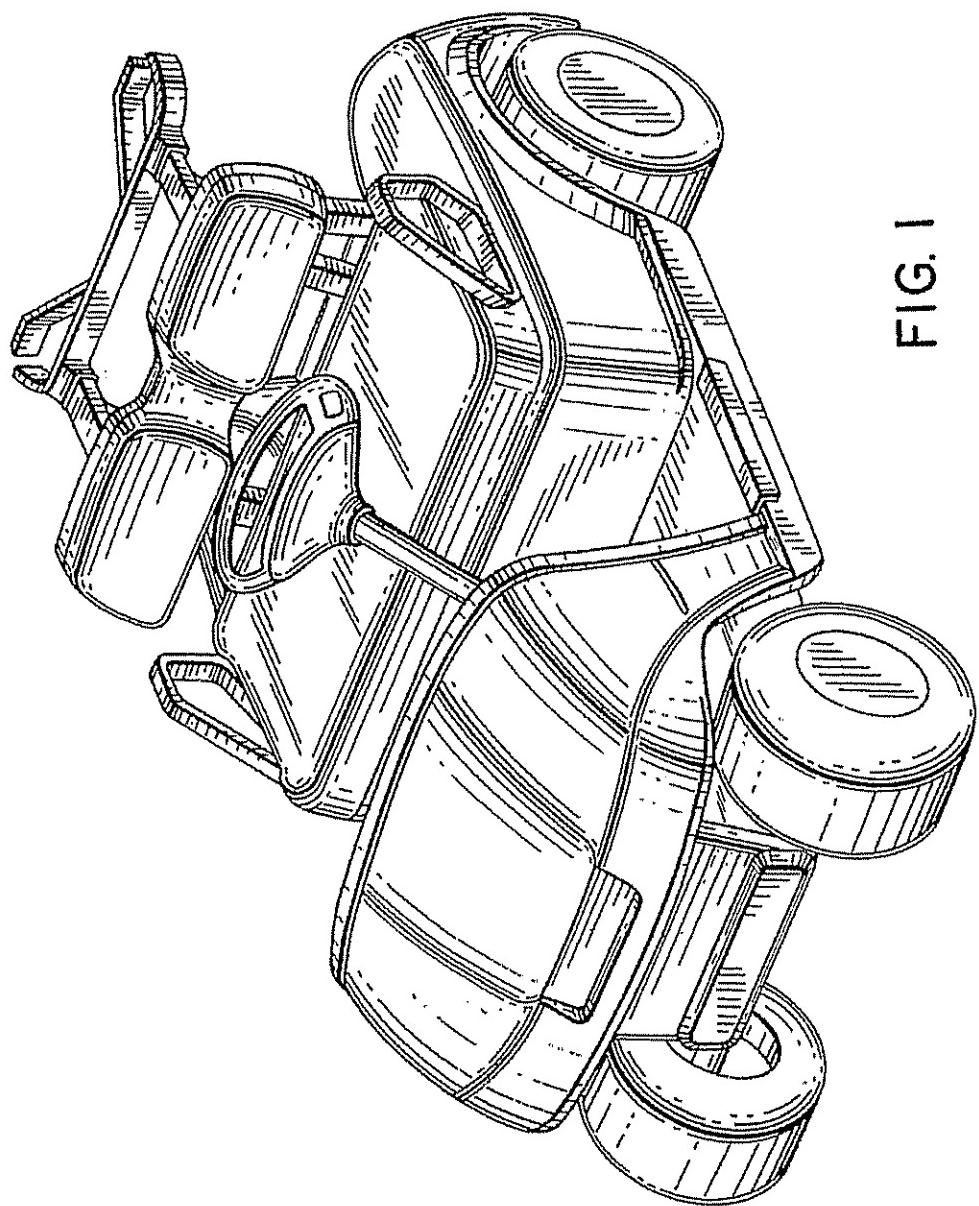


**U.S. Patent**

May 14, 1996

Sheet 1 of 4

**Des. 369,762**



**FIG. 1**

U.S. Patent

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Des. 369,762

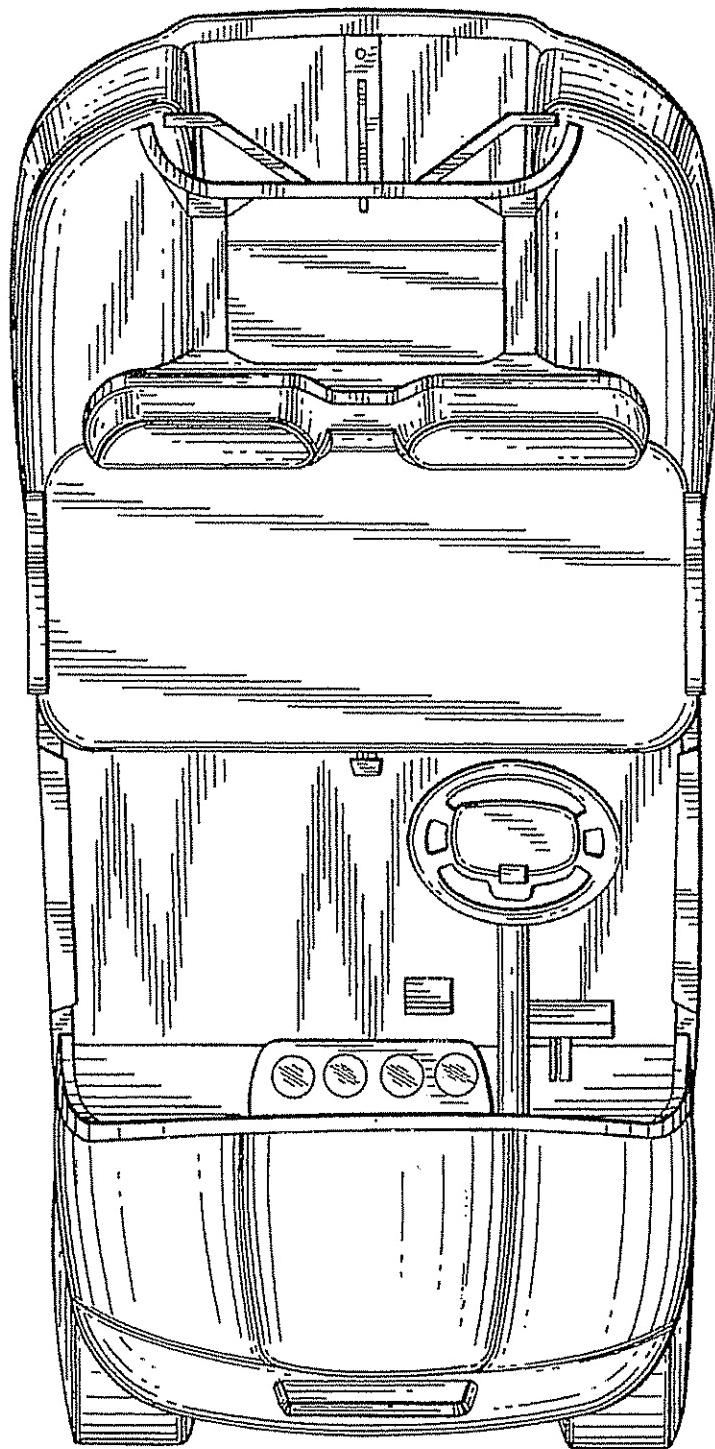


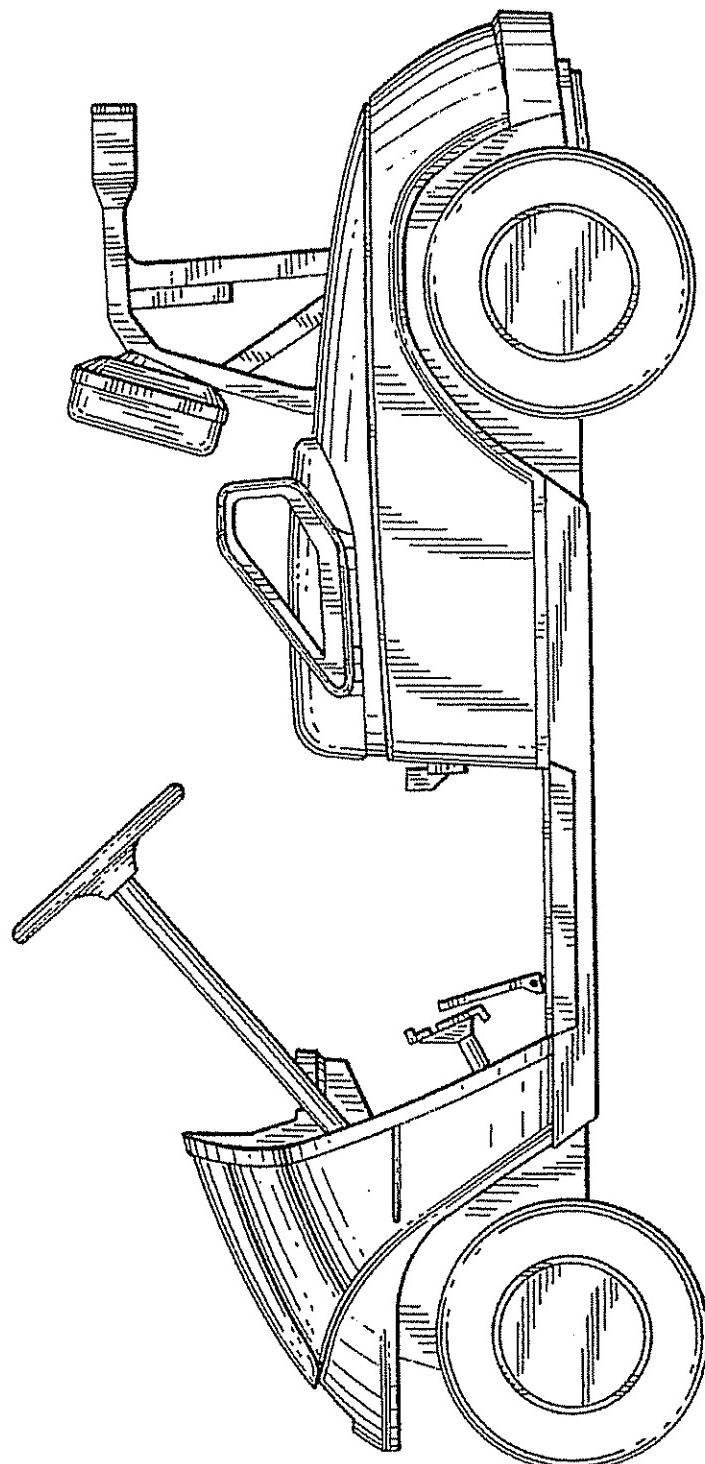
FIG. 2

**U.S. Patent**

May 14, 1996

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**Des. 369,762**



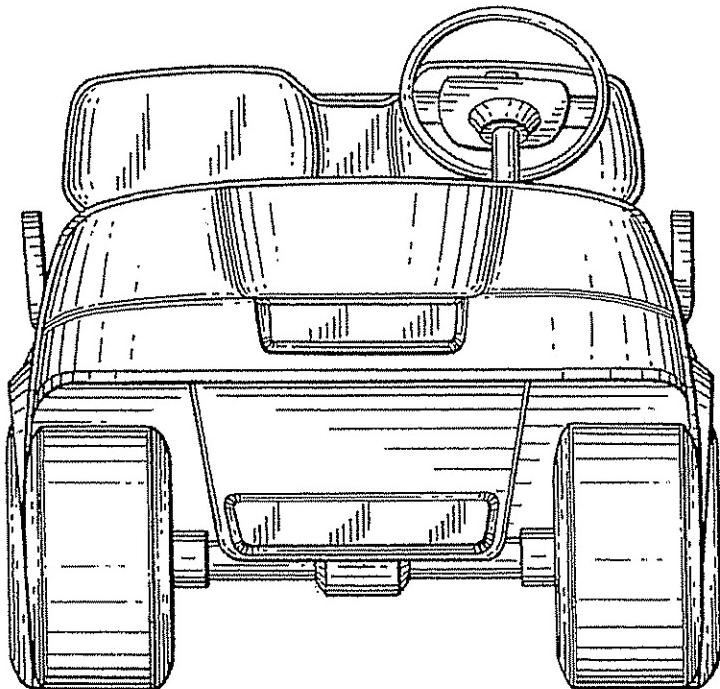
**FIG. 3**

**U.S. Patent**

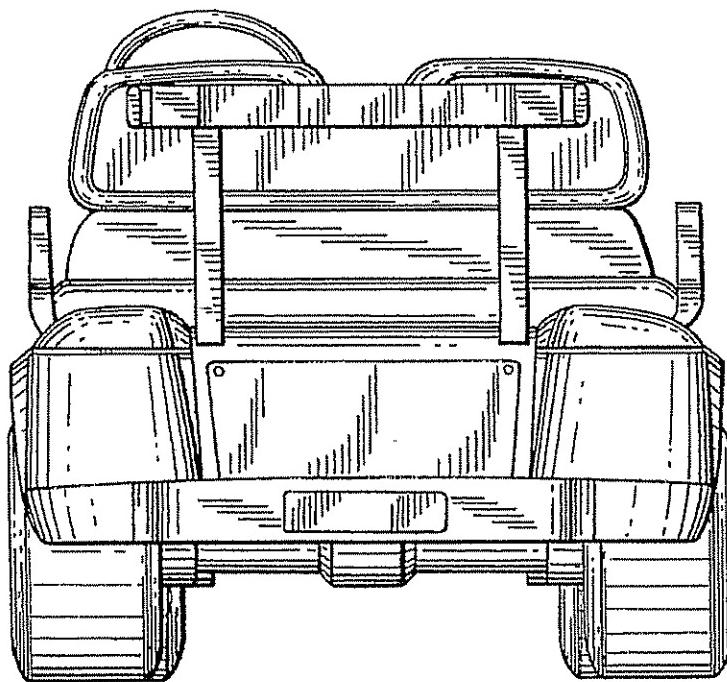
May 14, 1996

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**Des. 369,762**



**FIG. 4**



**FIG. 5**

# Exhibit C



US00D373099S

**United States Patent [19]**

Molzon et al.

[11] Patent Number: Des. 373,099

[45] Date of Patent: \*\* Aug. 27, 1996

## [54] GOLF CAR

[75] Inventors: William R. Molzon, Clarkston, Mich.; James M. Criscuolo, Martinez, Ga.

[73] Assignee: Textron Inc., Providence, R.I.

[\*] Notice: The portion of the term of this patent subsequent to Apr. 5, 2008, has been disclaimed.

[\*\*] Term: 14 Years

[21] Appl. No.: 17,534

[22] Filed: Jan. 14, 1994

## Related U.S. Application Data

[63] Continuation-in-part of Ser. No. 886,444, May 20, 1992, Pat. No. Des. 345,717, and a continuation-in-part of Ser. No. 886,445, May 20, 1992, Pat. No. Des. 345,718

[52] U.S. Cl. D12/16

[58] Field of Search D12/16; 296/186, 296/377, 280/DIG. 5

## [56] References Cited

## U.S. PATENT DOCUMENTS

D. 255,558	6/1980	Ekuan	D12/16
D. 320,580	10/1991	Kim	D12/16
D. 326,831	6/1992	Lanius et al.	D12/16
D. 345,717	4/1994	Molzon et al	D12/16
D. 345,718	4/1994	Molzon et al	D12/16

4,037,614	7/1977	Hines et al.	135/5 A
4,098,536	7/1978	Mills	296/78.1
4,334,692	6/1982	Lynch	280/79.1
4,533,012	8/1985	Hightower	180/210
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4,650,238	3/1987	Healey	296/37.7
4,772,064	9/1988	Moore	296/102
4,773,695	9/1988	Jones et al.	296/77.1
5,094,500	3/1992	Maypole et al.	296/102

## OTHER PUBLICATIONS

1990 E-Z-GO Textron Product Catalog, pp. 1,6,9,14,22,23, 24.

Primary Examiner—A. Hugo Word

Assistant Examiner—M. Brown

Attorney, Agent, or Firm—Perman &amp; Green

## [57] CLAIM

The ornamental design for a golf car, as shown and described.

## DESCRIPTION

FIG. 1 is a perspective view of a golf car showing our new design;

FIG. 2 is a top plan view thereof;

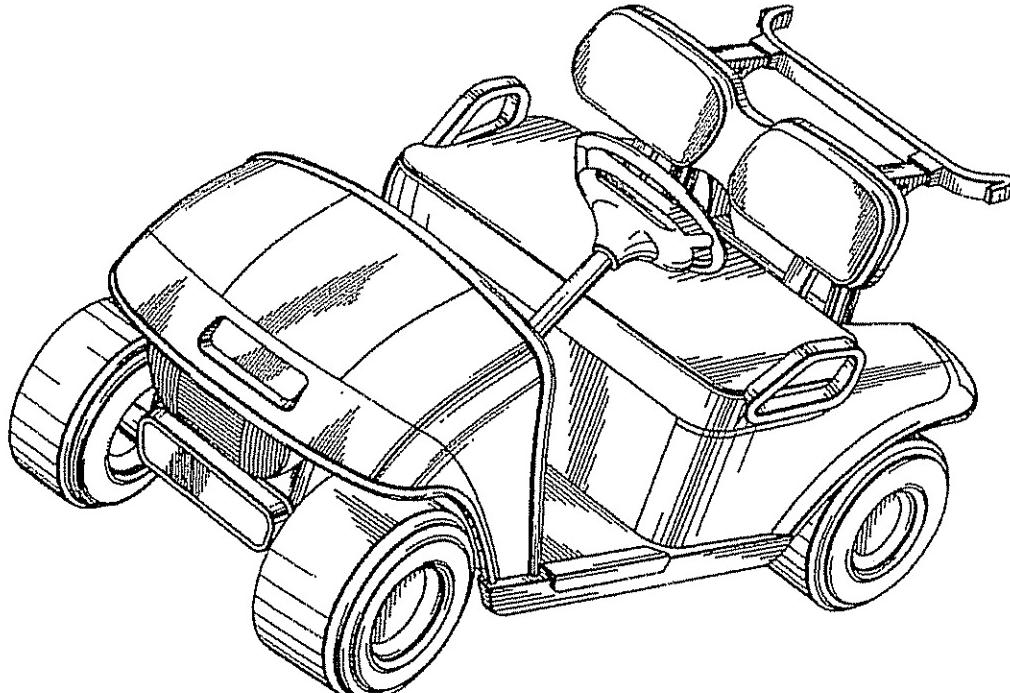
FIG. 3 is a left side elevational view thereof;

FIG. 4 is a front elevational view thereof;

FIG. 5 is a rear elevational view thereof; and,

FIG. 6 is a right side elevational view thereof.

1 Claim, 5 Drawing Sheets

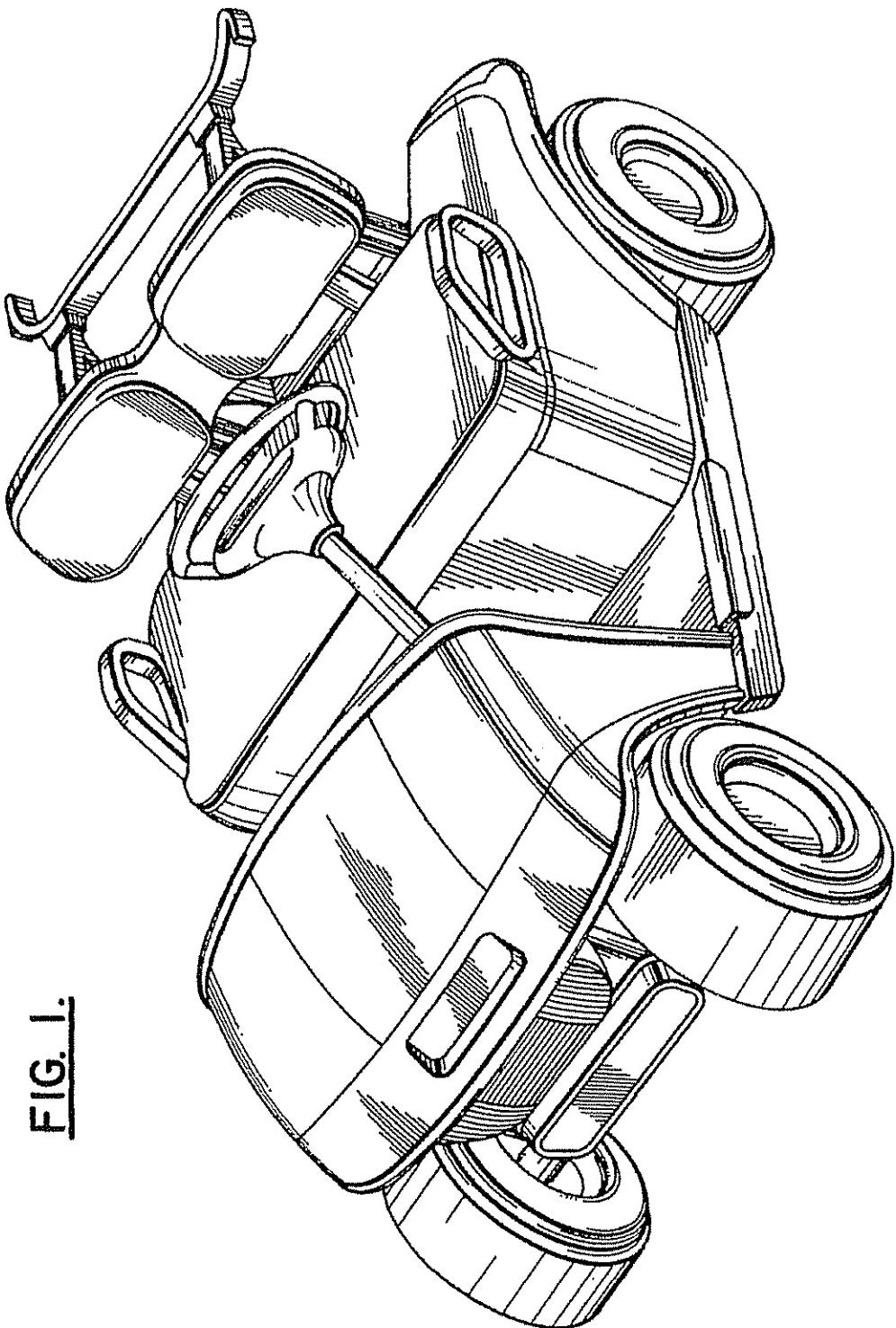


U.S. Patent

Aug. 27, 1996

Sheet 1 of 5

Des. 373,099



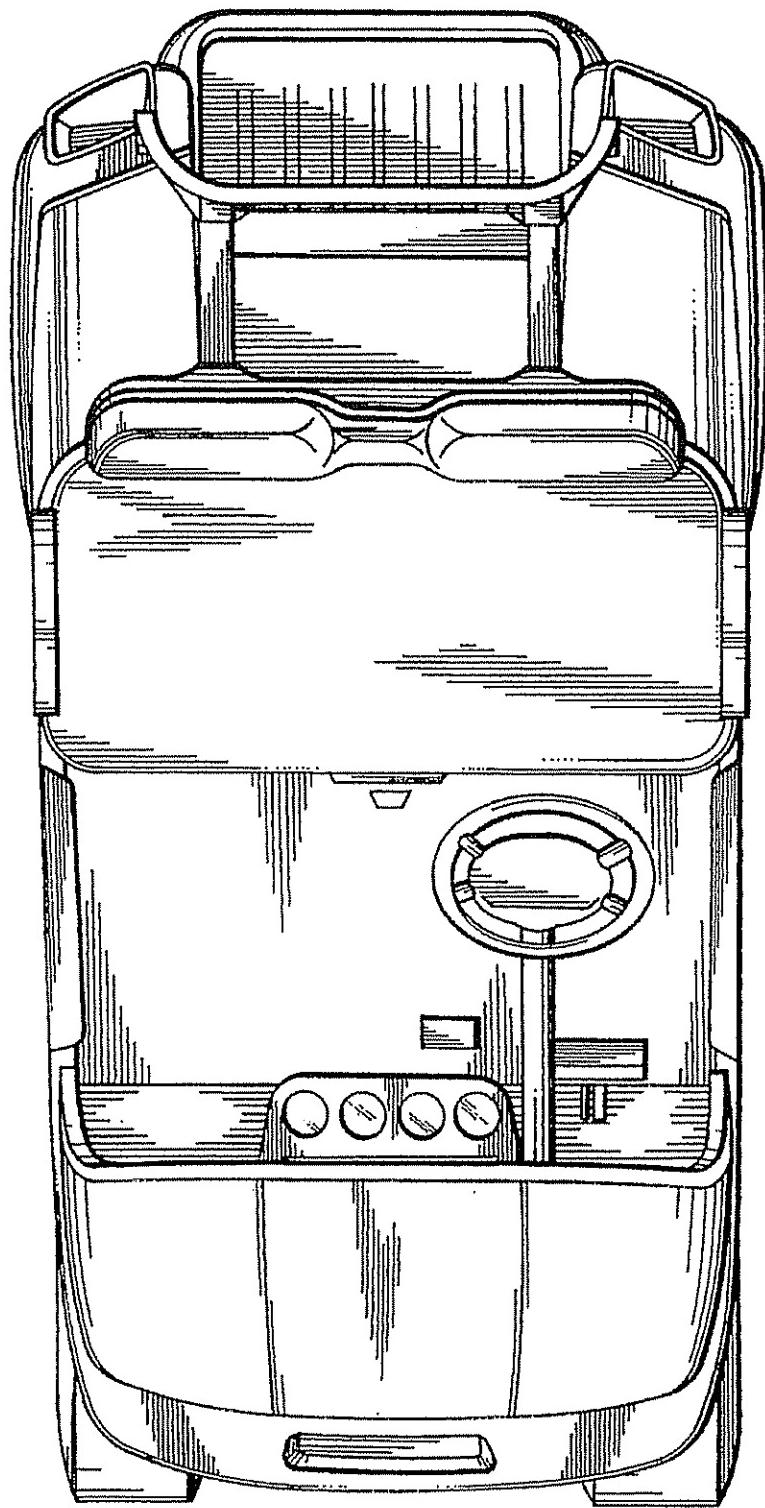
**U.S. Patent**

Aug. 27, 1996

Sheet 2 of 5

**Des. 373,099**

**FIG. 2.**



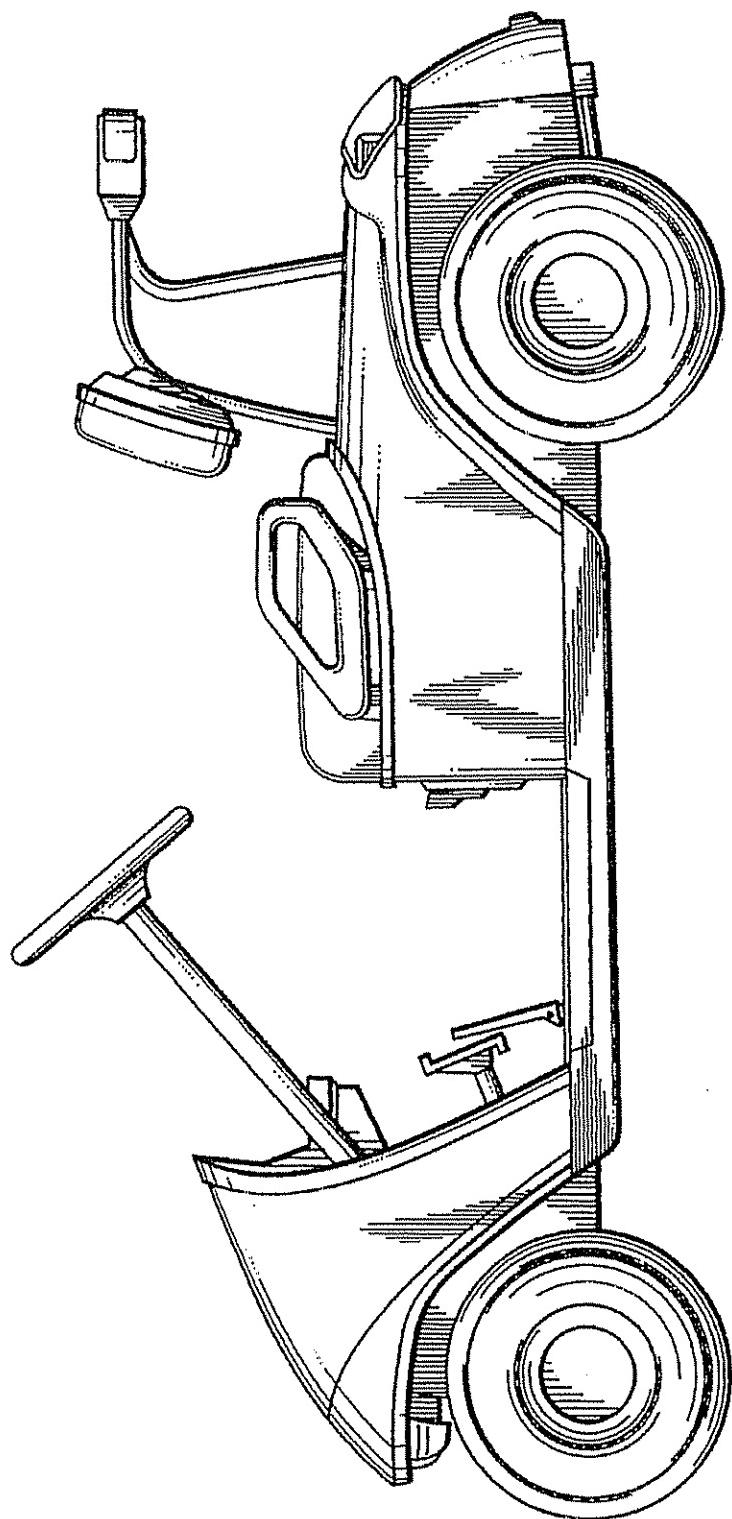
U.S. Patent

Aug. 27, 1996

Sheet 3 of 5

Des. 373,099

FIG. 3.



U.S. Patent

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Des. 373,099

FIG. 4.

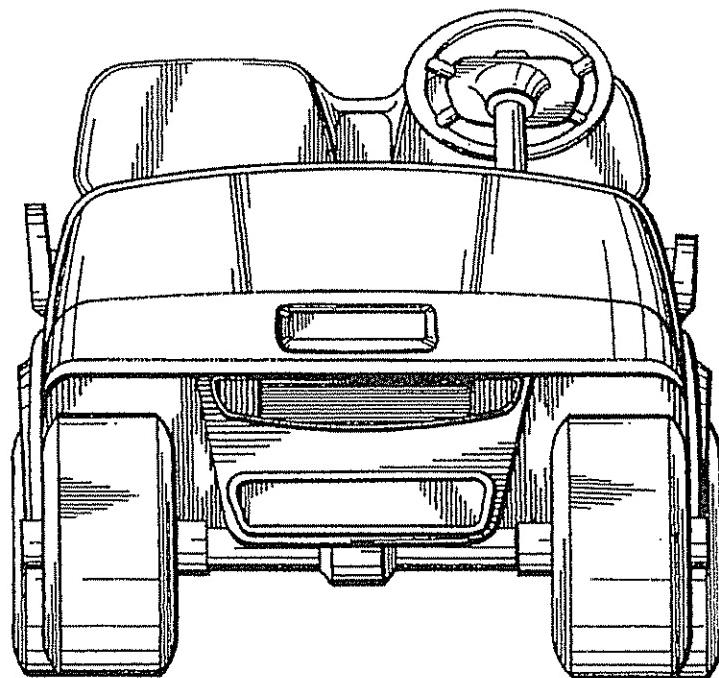
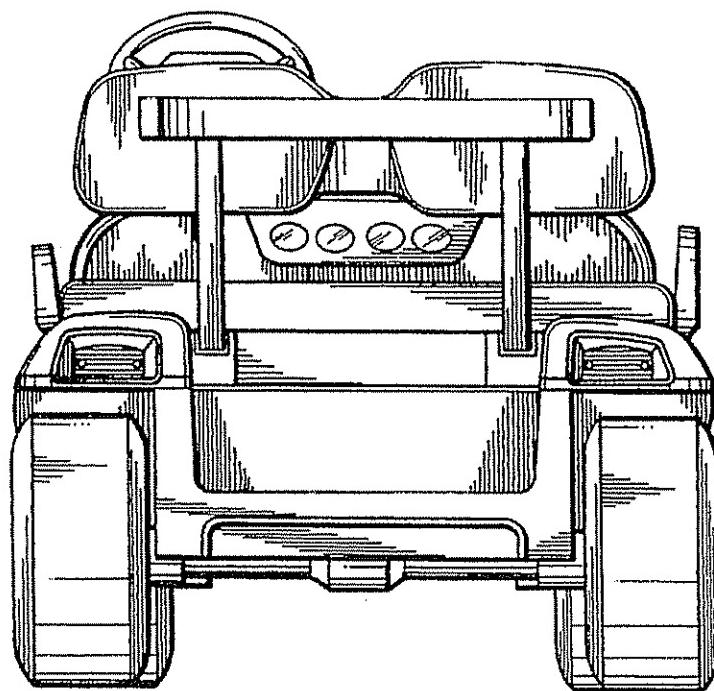


FIG. 5.



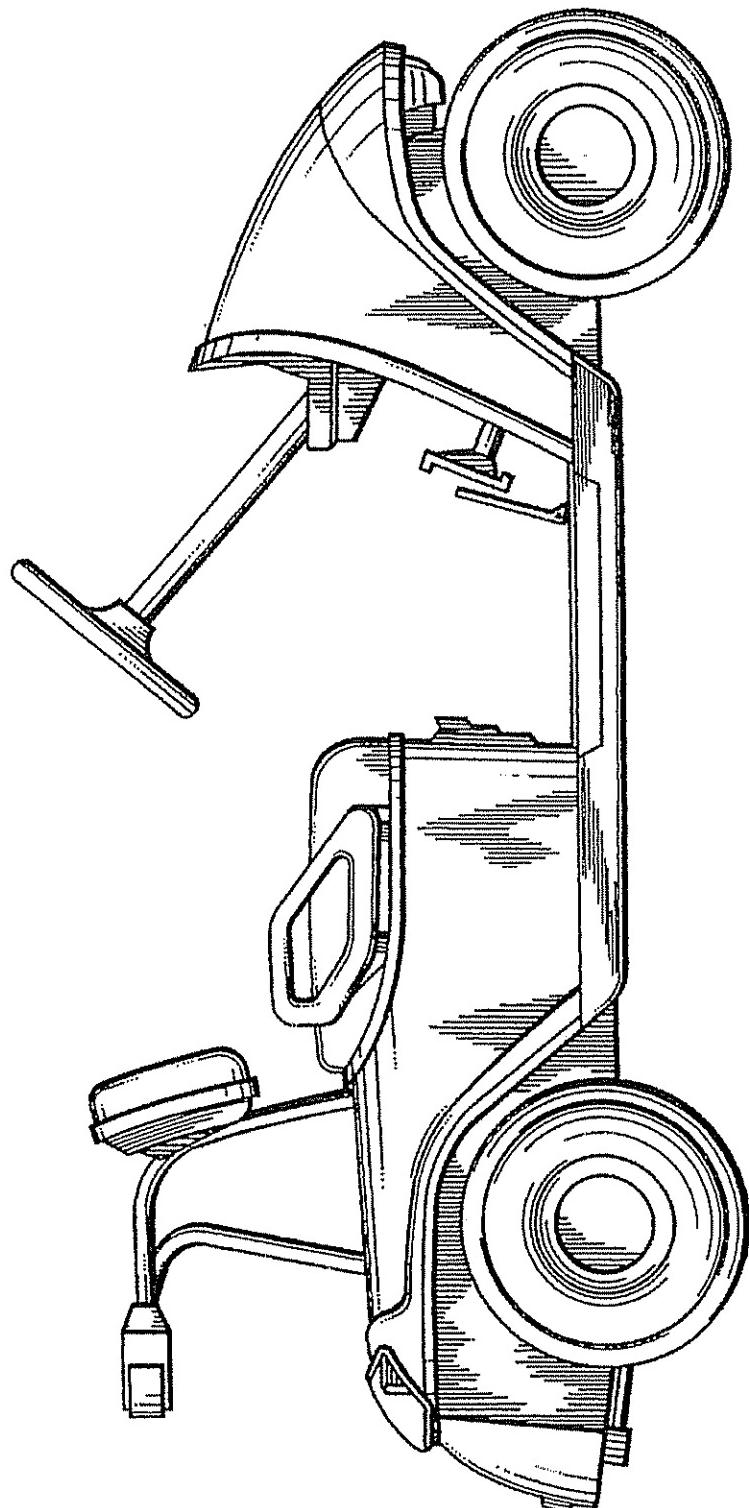
U.S. Patent

Aug. 27, 1996

Sheet 5 of 5

Des. 373,099

FIG. 6.



# **Exhibit D**

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FILED  
U.S. DISTRICT COURT  
AUGUSTA DIV.

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

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SO. DIST. OF GA.

TEXTRON INNOVATIONS, INC.,  
and E-Z GO (a division of  
TEXTRON, INC.).

Plaintiffs.

v.

FAIRPLAY ELECTRIC CARS, LLC,

Defendant.

CV 106-009

ORDER

Presently before the Court in the captioned matter is Plaintiffs' motion for a preliminary injunction to enjoin Defendant from infringing Plaintiffs' United States Design Patent No. 369,762. (Doc. No. 3.) Upon consideration of the evidence and the parties' written and oral arguments, the Court orally expressed findings of fact and conclusions of law into the record at the conclusion of the hearing held yesterday on this matter.

Based upon those findings of fact and conclusions of law, IT IS HEREBY ORDERED that Defendant Fairplay Electric Cars, LLC,<sup>1</sup> is enjoined and restrained within the United States of

<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 65(d), this injunction is binding upon Defendant's officers, agents, servants, employees, and attorneys, and any person in active concert or participation with them who receive actual notice

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America from making, assembling, importing, marketing, selling, or leasing the two-seater versions of Defendant's Fleet and Legacy Model Golf Cars, or any equivalent golf car.

This Order shall remain in effect until February 6, 2006; however, the expiration date of this Order will be extended if Defendant does not file its opposition to this injunction and arrange for another hearing by the close of business on

February 6, 2006.

ORDER ENTERED at Augusta, Georgia, this 24th day of

January, 2006.

  
UNITED STATES DISTRICT JUDGE

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of this Order, by personal service or otherwise.



**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44****Authority For Civil Cover Sheet**

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I.**     (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States, are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause.

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

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Civil Action No.

**ACKNOWLEDGMENT**  
**OF RECEIPT FOR AO FORM 85**

**NOTICE OF AVAILABILITY OF A**  
**UNITED STATES MAGISTRATE JUDGE**  
**TO EXERCISE JURISDICTION**

I HEREBY ACKNOWLEDGE RECEIPT OF 3 COPIES OF AO FORM 85.

JAN 30 2006

(Date forms issued)

Philip Casale  
(Signature of Party or their Representative)

Philip Casale  
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action